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SUBJECT: ARMENIAN FOUNDATIONS WIN RULING FROM EUROPEAN COURT OF HUMAN RIGHTS

REF: ANKARA 326

¶1. (SBU) Summary. On December 16 the European Court of Human Rights issued two judgments against Turkey for violating the property rights of two Armenian foundations in cases pertaining to properties they formerly owned. In both cases, the court ruled that Turkey had violated Article 1 of Protocol Number 1 of the European Convention on Human Rights. The two decisions are important for the future of minority foundation property. One involves compensation for property that had been transferred to a third party and the other pertains to the Foundations Law's 2008 amendment permitting the return of confiscated properties to the foundations as long as they had not been transferred to a third party. The GOT has a three month window in which to contest the decision, but is expected to return one of the properties and pay compensation for the other. End Summary.

¶2. (U) The "Samatya Surp Kevork Armenian Church, School and Cemetery Foundation" and the "Yedikule Surp Pirgic Armenian Hospital Foundation" brought cases against Turkey for the seizure of foundation property. Both foundations in question were established by Ottoman Imperial Decree in 1832 and are recognized by current Turkish Foundations law. In both instances Turkish courts had ruled that the foundations' charters did not give them the right to acquire immovable property - such as apartments or houses. On December 17, Minister of Foreign Affairs spokesperson, Burak Ozugergin, said the issue was very legally complicated and the MFA was still determining whether or not they would apply to the ECHR Grand Chamber to appeal the decision.

Compensation for Third Party Transfer

¶3. (SBU) In the case brought by Yedikule Surp Pirgic Armenian Hospital Foundation against the GOT, the lawyer for the foundation, Diran Bakar, explained that the property consisting of an apartment and garage had been donated to the foundation in 1962. Upon donation, he said, the property title was then registered in the name of the foundation. However, a Supreme Court (Yargitay) ruling in 1974 determined that minority foundations could not acquire property beyond that listed on their 1936 registry and a 1998 decision by Beyoglu's court of first instance demanded the annulment of the foundation's title to the property. According to the ECHR decision notes, in May 2001, the court returned the property title to the original owner who was long since deceased. Her heirs sold the property to another party in January 2007 for 426,000 Euros. The ECHR unanimously agreed that Turkey must pay the foundation 275,000 euros for the transferred property.

Potential Return of Seized Property

¶4. (SBU) The properties in the case brought by the Samatya Surp Kevork Armenian Church, School and Cemetery Foundation against Turkey are three contiguous houses donated to the foundation in 1955. However, following the 1974 Yargitay ruling, the General Directorate of Foundations brought a case against the foundation and in 1998 cancelled the registration and returned the title to the deceased original owner. The ECHR ruled that the GOT must either return the property or pay 600,000 euros compensation to the foundation. The foundation lawyer Setrak Davuthan told us he believes the GOT would return the property rather than pay compensation. He noted that the new Foundations Law provides for the return of confiscated properties to their foundation owners as long as they had not been transferred to a third person. He said that the ECHR provides yet another legal leg on which such a GOT decision could rest.

¶5. (SBU) Comment: The judgment continues a trend set by other minority foundations who have taken their cases to the ECHR. Many of these cases were initially tried in the Turkish court system and taken to the ECHR prior to the amendment of the Foundations Law in February 2008 (Ref A). The amended Foundations Law provides for the return of seized properties not sold to third parties, such as in the case of the Samatya Foundation, but does not appear to provide for compensation for properties sold to third parties. The ECHR decisions set a precedent for the return of properties using the Turkish court system and may prompt the Turkish Government to consider further amending the Foundations Law to include the compensation for properties sold to third parties. End Comment.

WIENER